



Local Programs Procedures

LPP 94-12 **Warranty Clauses**

References: 23 CFR 635.413
California Standard Specifications
Highway Infrastructure, GAO Report to Congressional Committees,
September 1994.

Effective Date: November 22, 1994 **Approved:**

Chief, Office of Local Programs

This procedure clarifies Federal Highway Administration (FHWA) policy on the use of warranties on exempt projects that are not on the National Highway System (NHS).

EXISTING PROCEDURES

The FHWA policy on the use of warranty clauses is found in 23 Code of Federal Regulations (CFR) 635.413:

- "(a) Except as provided in paragraph (b) of this section, clauses that require the contractor to guarantee or warrant materials and workmanship or to otherwise maintain the work for a specified period after its satisfactory completion by the contractor and its final acceptance by the State, will not be approved for use in Federal-aid contracts. Work performed and materials replaced under such guaranty or warranty clauses after final acceptance of work are not eligible for Federal participation.**
- "(b) Contracts which involve furnishing and/or installing electrical or mechanical equipment should generally include contract clauses that require:**

- (1) Manufacturer's warranties or guarantees on all electrical and mechanical equipment consistent with those provided as customary trade practice, or**
- (2) Contractors' warranties or guarantees providing for satisfactory in-service operation of the mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance."**

Proposed use of warranty clauses that conflict with 23 CFR 635.413 requires FHWA approval.

NEW PROCEDURES

The policy remains unchanged except for exempt non-NHS projects. FHWA approval is no longer required to include warranty provisions in contracts on exempt non-NHS projects. On exempt non-NHS projects, the decision to include warranty provisions is left to the discretion of the local agency.

For a discussion of model warranty provisions, see Highway Infrastructure, GAO Report to Congressional Committees, September 1994. Copies are available from your District Local Assistance Engineer.

Any proposed warranty provisions in contracts on NHS projects that conflict with 23 CFR 635.413 will still require FHWA approval.